## UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil Bankruptcy Judge Modesto, California

June 3, 2014 at 10:00 a.m.

#### INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

The court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court.

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
- 4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-90806-D-13	DAVID/MAELENA SMITH	MOTION TO CONFIRM PLAN
	PLG-1		4-24-14 [85]

2. 13-92208-D-13 JUAN/MARISELA MEJIA CJY-1

MOTION TO CONFIRM PLAN 4-14-14 [39]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

3. 11-91314-D-13 DANA/MICHELLE BELLOLI JDP-1

MOTION TO VALUE COLLATERAL OF PNC BANK, N.A. 5-1-14 [46]

### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of PNC Bank, N.A. at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of PNC Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

4. 13-92116-D-13 DIANA ROCHA ARM-1 CONTINUED MOTION TO APPROVE POST PETITION DUES OF CEDARBROOK HOMEOWNERS ASSOCIATION AS AN ADMINISTRATIVE PRIORITY 4-8-14 [44]

### Tentative ruling:

This is the motion of Cedarbrook Homeowners Association (the "HOA"), the homeowner's association for a rental property owned by the debtor, for approval of unpaid post-petition dues as an administrative claim in this case. The debtor has filed opposition, and the HOA has filed declarations in reply. For the following reasons, the motion will be granted in part.

In support of the motion, Sherri Lucy, of Management Alternative, the HOA's property manager, testified that the debtor's unpaid post-petition dues amounted to five months' worth (December 2013 through April 2014), at \$265 each, for a total of \$1,325, plus late fees at \$26.50 per month, for a total post-petition claim of \$1,457.50. In opposition, the debtor testifies that (1) her dues for the month of December 2013 (the month in which her bankruptcy petition was filed) are prepetition dues, and should be included in the HOA's claim for the same; and (2) since her petition was filed, she has paid all post-petition payments that have come due, including the one for May 2014, but her payments "have yet to be cashed" by the HOA. D. Rocha Decl., filed May 13, 2014, at 2:2. In reply, the HOA acknowledges it has received checks for five post-petition payments, all received on or after April 2, 2014. (The HOA does not yet have confirmation that the last two checks have cleared the debtor's account.)

The court agrees with the debtor's first contention — that the dues for December 2013 were "due" December 1, 2013, and thus, because the debtor's petition was filed December 2, 2013, those dues are not part of the HOA's post-petition claim. Under California law, an assessment of homeowner's dues "shall be a debt of the owner . . . at the time the assessment or other sums are levied." Cal. Civ. Code § 5650(a); see also In re Moreno, 479 B.R. 553, 564-65 (Bankr. E.D. Cal. 2012). A transaction listing filed with Ms. Lucy's declaration demonstrates that the

December 2013 dues were assessed on December 1, 2013; thus, they became a debt that day, and constitute a pre-petition debt, regardless of the fact that they did not become "delinquent," for purposes of the HOA's right to assess a late charge, until December 15, 2013. As the HOA was not entitled to assess a late charge until December 15, 2013 (see Cal. Civ. Code § 5650(b)2)), the late charge is part of its post-petition claim.

With one exception, the court also agrees with the debtor's second contention—that since her petition was filed, she has paid all post-petition payments that have come due (assuming her last two checks have cleared her account). The exception is that the debtor has paid no late charges, although her exhibits—copies of checks and certified mail return receipts—demonstrate that all five payments—those for January through May 2014, have been made late. Thus, the HOA has a post-petition claim in the amount of five late charges, a total of \$132.50, and the motion will be granted to the extent that the HOA will be allowed an administrative claim in that amount. Further, given that the debtor has made all five post-petition payments late—four of them more than a month late, and given that both plans the debtor has proposed in this case have proposed a 0% dividend to general unsecured creditors (suggesting the debtor's budget is already at its limit)—the court questions whether, from a feasibility standpoint, the debtor is a suitable candidate for chapter 13, but that issue is not before the court at this time.

Finally, the court will decline the HOA's request for a finding that the debtor's dues for June 2014 forward, if not paid, will have the status of administrative claims. Nothing about this chapter 13 case or any plan the debtor may propose will abrogate the debtor's obligation to make ongoing payments of HOA dues on a timely basis; if she fails to do so, the HOA make take such action as is appropriate at that time.

The court will hear the matter.

5. 14-90624-D-13 GREGORY/JULIE RICHIE BSH-1

MOTION TO VALUE COLLATERAL OF HSBC MORTGAGE SERVICES, INC. 5-2-14 [12]

## Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of HSBC Mortgage Services, Inc. at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of HSBC Mortgage Services, Inc.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

6. 09-93925-D-13 EMMETT TEMPLETON JDP-1

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A. 4-22-14 [68]

## Final ruling:

This is the debtor's motion to value collateral of Citibank, N.A. — a second position deed of trust against the debtor's residence. The motion will be denied because the evidence in support of the motion demonstrates that the moving party is not entitled to the relief requested. The motion states that the amount due on the first deed of trust is \$260,000, and the value of the property is \$130,000. In contrast, the debtor's supporting declaration gives the same amount, \$260,000, as the amount due on the first, but states that the debtor values the property at \$297,000. At that value, there is equity in the property to secure the second deed of trust, and the motion will be denied.

The motion will be denied by minute order. No appearance is necessary.

7. 09-93232-D-13 DENNIS/AMY HARPER JDP-1

MOTION TO VALUE COLLATERAL OF HSBC BANK USA, N.A. 4-22-14 [42]

### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of HSBC Bank USA, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of HSBC Bank USA, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

8. 11-92532-D-13 ARMANDO/MYRNA VERDIN JDP-1

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 4-30-14 [38]

#### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

9. 12-93234-D-13 TOMMY/TENICIA WILLIAMS MOTION TO MODIFY PLAN JCK-2 4-17-14 [48]

# Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

10. 13-91935-D-13 EMILIO REBOLLEDO AND MOTION TO CONFIRM PLAN TOG-4 MARIA FERNANDEZ 4-8-14 [58]

11. 14-90335-D-13 JULIA HALE BSG-1

OBJECTION TO CONFIRMATION OF PLAN BY CONTRA COSTA COUNTY TREASURER-TAX COLLECTOR 5-2-14 [16]

12. 09-90638-D-13 DAVID/RENEE ESHOO JDP-1

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 4-22-14 [94]

#### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 09-90638-D-13 DAVID/RENEE ESHOO JDP-2

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 4-22-14 [98]

## Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

14. 13-91638-D-13 SHAWNTE PRIEST PGM-2

CONTINUED MOTION TO CONFIRM PLAN 3-17-14 [62]

15. 14-90338-D-13 JAMES/KELLY FEE RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 5-2-14 [14]

16. 11-92139-D-13 MUBEEN SYED JDP-1

MOTION TO VALUE COLLATERAL OF PNC BANK, N.A. 4-22-14 [45]

# Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of PNC Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of PNC Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

17. 13-91540-D-13 ALONSO/MARTHA ORTEGA CJY-1

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 5-1-14 [19]

#### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Internal Revenue Service at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Internal Revenue Service's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

18. TOG-1 CARRENO

14-90341-D-13 FELIPE VELASCO AND ALMA MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 4-25-14 [32]

# Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

19. TOG-4

CARRENO

14-90341-D-13 FELIPE VELASCO AND ALMA MOTION TO CONFIRM PLAN 4-9-14 [27]

20. 14-90553-D-13 RICK/MARVELYN SOUZA TOG-1

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 5-1-14 [9]

### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

MOTION TO CONFIRM PLAN 4-16-14 [19]

22. 14-90154-D-13 RENEE VENTURA SDM-2

MOTION TO VALUE COLLATERAL OF CARRINGTON RESOLUTION 4-30-14 [29]

## Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Carrington Resolution at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Carrington Resolution's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 12-91858-D-13 CURTIS/CONSTANCE HOLLEY MOTION TO INCUR DEBT 5-7-14 [31] JAD-1

24. 12-90664-D-13 CAIN ZUNIGA AND ROSEMARY MOTION TO MODIFY PLAN CJY-3 SALINAS

4-21-14 [39]

### Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

25. 14-90266-D-13 CAROLINE CLINK-CRAWFORD JDP-1

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS 5-6-14 [22]

## Final ruling:

This case was converted to a case under Chapter 7 on May 21, 2014. As a result the hearing on this motion is continued to June 12, 2014 at 10:30 a.m. to be heard by the Hon. Ronald H. Sargis. No appearance is necessary on June 3, 2014.

26. 14-90266-D-13 CAROLINE CLINK-CRAWFORD

MOTION TO AVOID LIEN OF PROFESSIONAL COLLECTION CONSULTANTS 5-6-14 [28]

#### Final ruling:

This case was converted to a case under Chapter 7 on May 21, 2014. As a result the hearing on this motion is continued to June 12, 2014 at 10:30 a.m. to be heard by the Hon. Ronald H. Sargis. No appearance is necessary on June 3, 2014.

27. 14-90372-D-13 HOMER/HELEN MALDONADO RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-2-14 [22]

28. 11-92473-D-13 JDP-2

28. 11-92473-D-13 GEORGE/RACHAEL CASTRO

MOTION TO MODIFY PLAN 4-21-14 [72]

# Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

29. 14-90380-D-13 DENNIS/CHRISTA MEYERS RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-2-14 [20]

CJY-4

30. 12-91983-D-13 DEEPESH/KRISTEN CHAND

MOTION TO MODIFY PLAN 4-24-14 [57]

### Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

31. 09-93189-D-13 TONY TRUONG JDP-1

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A. 4-22-14 [88]

#### Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citibank, N.A. at \$0.00, pursuant to \$ 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

32. 11-93492-D-13 KEVIN/BOBBIE YOUNG JHW-1 TD AUTO FINANCE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY 5-1-14 [111]

33. 09-90993-D-13 JOHN/DONNA ACKERMAN JDP-1

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 5-6-14 [67]

#### Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

JDP-1

PEREZ

34. 11-91793-D-13 JOEL RAMIREZ AND OFELIA MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 5-1-14 [39]

# Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

35. 14-90295-D-13 LORENZO OJEDA RDG-3

EXEMPTIONS

4-23-14 [37]

#### Final ruling:

This case was dismissed on April 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

36. 14-90001-D-13 LENA BAKER

LOB-2

MOTION TO RECONSIDER AND VACATE OR AMEND THE ORDER TO DISMISS CASE

OBJECTION TO DEBTOR'S CLAIM OF

5-9-14 [92]

#### Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to reconsider and vacate or to amend the court's April 25, 2014 order dismissing this case. For the following reasons, the motion will be denied.

First, the notice of hearing did not comply with the court's local rules. The moving party gave only 25 days' notice of the hearing; thus, the moving party was required to advise potential respondents in the notice of hearing that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). Instead, the notice of hearing stated that those not wanting the court to vacate the dismissal order or

wanting the court to consider their views should appear at the hearing. However, the notice also stated, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . ." Notice of Hearing, filed May 9, 2014, at 1:31-2:1. These steps are not required by the local rules for a motion brought under LBR 9014-1(f)(2). These directions may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

Second, there is insufficient evidence of service. The proof of service states that the notice, motion, supporting declaration, and proof of service were served "on the United States Trustee Russell Greer" "by facsimile transmission." Russell Greer is not the United States Trustee, and the the fax number used is not given. As a result, the court cannot determine whether the United States Trustee or Russell Greer was served. Further, the moving party failed to serve any of the creditors in the case, despite the fact that their interests would clearly be impacted by an order vacating the dismissal.

Third, the moving papers fail to state a reason for the relief requested and do not include any evidence supporting such relief, as required by LBR 9014-1(d)(6). The motion states that "[t]he debtor has filed documents under seal with the court clerk that serve as the basis for this motion." Motion to Reconsider, filed May 9, 2014, at 1:20-21. Not so. The filing of documents under seal is governed by § 107(b) and (c) of the Bankruptcy Code and Fed. R. Bankr. P. 9018, pursuant to which documents may be filed under seal only with the permission of the court. In this case, the debtor has not sought permission to file any documents under seal. The only document filed in support of this motion is a declaration of the debtor's attorney, who states only: "3. Lena Baker filed a bankruptcy petition on January 1, 2014. 4. The meeting of creditors was held on February 19th, 2014. 5. The court granted the trustee's order [sic] to dismiss the debtor case on April 25, 2014. 6. The debtor through their attorney has filed a motion to vacate and reconsider. 7. Counsel prays that this court grants debtors [sic] motion to vacate and reconsider." B. Robinson Decl., filed May 9, 2014, at 1:21-26. The declaration purports to set forth no grounds at all for the granting of the motion.

As a result of these service and notice defects, because the moving papers fail to give a basis for the relief requested, and because there is no evidence supporting the relief requested, the motion will be denied by minute order. No appearance is necessary.

37. 11-91970-D-13 HAL/KAREN MCMURPHY DCJ-1

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A. 5-19-14 [33]